

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.:	10/662,955	§		
Filed:	September 15, 2003	§	Examiner:	Nguyen, Nha T.
Inventor(s):	Syed Mohammad Amir Husain, Todd John Enright and Barry W. Thornton	§ § § § §	Group/Art Unit:	2825
			Atty. Dkt. No:	5602-12200
Title:	SYSTEM AND METHOD FOR AUTOMATIC SOFTWARE RETRIEVAL ON A PEER-TO-PEER NETWORK	§ § § § §		

APPEAL BRIEF

Dear Sir or Madam:

Further to the Notice of Appeal filed on July 11, 2007, Appellants present this Appeal Brief. Appellants respectfully request that this appeal be considered by the Board of Patent Appeals and Interferences.

I. REAL PARTY IN INTEREST

The subject application is owned by ClearCube Technology, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, and having its principal place of business at 8834 Capitol of Texas Highway, Austin, TX 78759, as evidenced by the assignment recorded at Reel 014869, Frame 0768.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to Appellants, Appellants' legal representatives, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1 – 30 are pending. Claims 1 – 30 are rejected, and the rejection of these claims is being appealed. A copy of claims 1 – 30 is included in the Claims Appendix attached hereto.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been submitted subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed towards a method comprising receiving software (*see, e.g.*, Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14) at one or more remote computer systems (*see, e.g.*, Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B). The method further comprises receiving instructions for installing the software at the one or more remote computer systems (*see, e.g.*, Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14). The instructions for installing the software comprise one or more messages in a portable format (*see, e.g.*, page 4, lines 8-14; page 6, lines 28-29; page 55, lines 16-21). The method also comprises translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions (*see, e.g.*, Fig. 23, reference character 2411; page 6, line 29 to page 7, line 2; page 56, lines 11-18). The method further comprises executing the executable instructions to install the software at each of the one or more remote computer systems (*see, e.g.*, page 7, lines 2-4; page 56, lines 11-18; page 60, line 7 to page 61, line 23).

Independent claim 9 is directed towards a computer-accessible memory medium comprising program instructions (*see, e.g.*, page 63, lines 1-6). The program instructions are computer-executable to implement receiving software (*see, e.g.*, Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14) at one or more remote computer systems (*see, e.g.*, Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B). The program instructions are further computer-executable to implement receiving instructions for installing the software at the one or more remote computer systems (*see, e.g.*, Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14). The instructions for installing the software comprise one or more messages in a portable format (*see, e.g.*, page 4, lines 8-14; page 6, lines 28-29; page 55, lines 16-21). The program instructions are also computer-executable to implement translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote

computer systems, thereby generating executable instructions (*see, e.g.,* Fig. 23, reference character 2411; page 6, line 29 to page 7, line 2; page 56, lines 11-18). The program instructions are further computer-executable to implement executing the executable instructions to install the software at each of the one or more remote computer systems (*see, e.g.,* page 7, lines 2-4; page 56, lines 11-18; page 60, line 7 to page 61, line 23).

Independent claim 17 is directed towards a system comprising a first computer system comprising a first Central Processing Unit (CPU) and a first memory (*see, e.g.,* Fig. 1, reference characters 101, 105, 109; Fig. 3, reference characters 304, 206; Fig. 22, reference characters 101A, 101B; page 15, line 21 to page 20, line 14). The system also comprises one or more remote computer systems, each comprising a respective remote CPU and a respective remote memory (*see, e.g.,* Fig. 1, reference characters 101, 105, 109; Fig. 3, reference characters 304, 206; Fig. 22, reference characters 101A, 101B; page 15, line 21 to page 20, line 14). The first computer system and the one or more remote computer systems are communicatively coupled via a network (*see, e.g.,* Fig. 3, reference character 305; page 19, line 25 to page 20, line 1). The first memory stores program instructions which are executable by the first CPU to send software to the one or more remote computer systems (*see, e.g.,* Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14). The program instructions are also executable by the first CPU to send instructions for installing the software to the one or more remote computer systems (*see, e.g.,* Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14). The instructions for installing the software comprise one or more messages in a portable format (*see, e.g.,* page 4, lines 8-14; page 6, lines 28-29; page 55, lines 16-21). The remote memories store program instructions which are executable by the respective remote CPUs to receive the software (*see, e.g.,* Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14). The program instructions are further executable by the respective remote CPUs to receive the instructions for installing the software (*see, e.g.,* Fig. 23, reference character 2409; page 6, lines 24-27; page 56, lines 4-10; page 61, lines 4-14). The program instructions are also executable by the respective remote CPUs to translate the instructions for installing the software from the portable format to an executable format at

each of the one or more remote computer systems, thereby generating executable instructions (*see, e.g.*, Fig. 23, reference character 2411; page 6, line 29 to page 7, line 2; page 56, lines 11-18). The program instructions are further executable by the respective remote CPUs to execute the executable instructions to install the software at each of the one or more remote computer systems (*see, e.g.*, page 7, lines 2-4; page 56, lines 11-18; page 60, line 7 to page 61, line 23).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1 – 6, 8 – 14, 16 – 22, and 24 – 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Turpin, et al. (U.S. Patent No. 6,144,992), hereinafter “Turpin.”
2. Claims 7, 15, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Turpin in view of Vigue, et al. (U.S. Patent No. 6,983,326), hereinafter “Vigue.”

VII. ARGUMENT

First Ground of Rejection:

Claims 1 – 6, 8 – 14, 16 – 22, and 24 – 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Turpin, et al. (U.S. Patent No. 6,144,992), hereinafter “Turpin.” Appellants traverse this rejection for the following reasons. Different groups of claims are addressed under their respective subheadings.

Claims 1-3, 8-11, 16-19, and 24-30:

Regarding claim 1, Appellants respectfully submit that Turpin fails to teach or suggest a method comprising “translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions” in combination with the remaining

features of claim 1. In rejecting this limitation of claim 1, the Final Office Action cites the Abstract and col. 5, lines 19 – 25 of Turpin. At col. 5, lines 19 – 25, Turpin discusses the operation of an IMGSLAVE program resident on recipient (slave) computer systems:

The IMGSLAVE program operates in only one mode of operation. Specifically, it opens a communication socket on the network, listens for data received on that socket, and then processes the data received on the socket. Each packet of data received on the socket contains a command field which tells IMGSLAVE what the data contained in the packet is used for and how the data is to be processed.

Therefore, Turpin's recipient computer system receives packets of data and executes commands located in the command field of each packet to process the data accordingly. However, none of the commands are translated from a portable format to an executable format, nor are any of the commands executable to translate other instructions (e.g., instructions for installing software) from one format to another format. The commands disclosed by Turpin include functions executable by the slave to respond to the master to indicate participation in the download, ask the master to resend the data, and disconnect the slave from the master (col. 5, lines 30 – 47). The commands disclosed by Turpin also include functions executable by the master to compare the geometry of the master image with that of the slave, acknowledge that the slave has joined the process and that the master knows the slave is ready, write the data to a receive buffer, write the data to the receive buffer and flush the data to disk, skip this track, indicate that the master has finished sending data, exit the master program, and acknowledge the slave disconnect (col. 5, lines 30 – 47). Appellants therefore submit that no element of Turpin, including the commands listed above, is operable to translate the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions.

In the “Response to Argument” section of the Final Office Action, the Examiner argues that the “processing of the packet in Turpin is the ‘translating the instructions for installing the software from the portable format to an executable format at each of the one

or more remote computer systems, thereby generating executable instructions.”’ Appellants respectfully disagree. As discussed above, Turpin’s recipient computer system receives packets of data and executes commands found in the command field of each packet. Although Turpin may “process” the data in a packet, there is no teaching or suggestion in Turpin that instructions found in a packet are translated from a portable format to an executable format.

In the Advisory Action, the Examiner further argues that the above-referenced limitation of Appellants’ claim 1 is disclosed by Turpin’s flushing of data to disk (e.g., col. 9, lines 6-10). Again, Appellants respectfully disagree. When data is flushed to disk, the data is merely moved from one location (e.g., in volatile memory) to another location (e.g., in nonvolatile memory). There is no teaching or suggestion in Turpin that flushing of data to disk involves the translation of instructions for installing software from a portable format to an executable format.

Furthermore, the Examiner notes in the Advisory Action that Turpin incorporates Platt (U.S. Patent No. 5,421,009) by reference. Platt discloses that all the files to be installed on a client computer system are combined into a single data stream on a server, sent from the server to the client, separated into individual files, and installed on the client (e.g., col. 2, lines 3-42). However, Appellants can find no teaching or suggestion in Platt that the instructions for installing the software are translated from a portable format to an executable format.

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed above, Turpin fails to disclose a method comprising “translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating

executable instructions” in combination with the remaining features of claim 1. Therefore, Turpin cannot be said to anticipate claim 1.

Accordingly, claim 1 and its dependent claims 2, 3, 8, 25, and 26 are believed to patentably distinguish over Turpin for at least the reasons given above. Claims 9 and 17 recite features similar to those of claim 1 and, along with their dependent claims 10, 11, 16, 18, 19, 24, and 27-30, are believed to patentably distinguish over Turpin for at least the same reasons.

Claims 4, 12, and 20:

Regarding claim 4, Appellants respectfully submit that Turpin fails to teach or suggest a method comprising “receiving user input to record the instructions for installing the software” in combination with its base claim 1. In rejecting claim 4, the Final Office Action cites Turpin’s teachings at col. 3, line 65 to col. 4, line 7. In the cited passage, Turpin states that the method for installing software and data “can function upon user command.” However, Appellants can find no teaching or suggestion in Turpin that instructions for installing the software are recorded in the manner recited in claim 4, where the same instructions for installing the software are received at the one or more remote computer systems and translated from a portable format to an executable format at each of the one or more remote computer systems.

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed above, Turpin fails to disclose a method comprising “receiving user input to record the instructions for installing the software” in combination with claim 1. Therefore, Turpin cannot be said to anticipate claim 4. Claims 12 and 20 recite

features similar to those of claim 4 and are believed to patentably distinguish over Turpin for at least the same reasons.

Claims 5, 13, and 21:

Regarding claim 5, Appellants respectfully submit that Turpin fails to teach or suggest a method “wherein the user input comprises instructions to send the software to an additional remote computer system and install the software on the additional remote computer system” in combination with the remaining features of its base claim 1 and intervening claim 4. In rejecting claim 5, the Final Office Action cites Turpin’s teachings at col. 3, line 65 to col. 4, line 7. In the cited passage, Turpin states that the method for installing software and data “can function upon user command.” However, Appellants can find no teaching or suggestion in Turpin that instructions to send the software to an additional remote computer system and install the software on the additional remote computer system are recorded in the manner recited in claims 4 and 5.

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed above, Turpin fails to disclose a method “wherein the user input comprises instructions to send the software to an additional remote computer system and install the software on the additional remote computer system” in combination with the remaining features of its base claim 1 and intervening claim 4. Therefore, Turpin cannot be said to anticipate claim 5. Claims 13 and 21 recite features similar to those of claim 5 and are believed to patentably distinguish over Turpin for at least the same reasons.

Claims 6, 14, and 22:

Regarding claim 6, Appellants respectfully submit that Turpin fails to teach or suggest a method comprising “receiving user input to select the one or more remote computer systems from a plurality of available computer systems” in combination with its base claim 1. In rejecting claim 6, the Final Office Action cites Turpin’s teachings at col. 7, lines 19-25. In the cited passage, Turpin discloses that a “master” computer may transfer data to a network server and/or one or all of the “slave” computers. However, Appellants can find no teaching or suggestion in Turpin that user input to select the one or more remote computer systems from a plurality of available computer systems is received.

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed above, Turpin fails to disclose a method comprising “receiving user input to select the one or more remote computer systems from a plurality of available computer systems” in combination with claim 1. Therefore, Turpin cannot be said to anticipate claim 6. Claims 14 and 22 recite features similar to those of claim 6 and are believed to patentably distinguish over Turpin for at least the same reasons.

Second Ground of Rejection:

Claims 7, 15, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Turpin in view of Vigue, et al. (U.S. Patent No. 6,983,326), hereinafter “Vigue.” Appellants traverse this rejection for the following reasons.

Claims 7, 15, and 23:

Appellants respectfully submit that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine Turpin and Vigue

to produce the claimed invention. The Final Office Action argues that the combination of Turpin and Vigue would have been obvious “because one of the ordinary skill in the art would want to be able to utilize the messages format to provide the mark-up of sections in the message,” allowing “for the flexibility in the displaying and presentation of data.” However, Appellants cannot find evidence of this motivation in either Turpin or Vigue. Appellants respectfully submit that neither Turpin nor Vigue recites a reason to combine the references to produce the limitations of claim 7 and its base claim 1.

To establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. For at least the reasons discussed above with respect to claim 1, Appellants respectfully submit that the Turpin and Vigue, taken individually or in combination, would not produce all the limitations recited in claim 7 and its base claim 1. Accordingly, Appellants respectfully submit that claim 7 is patentably distinct from the cited references. For similar reasons, claims 15 and 23 are believed to patentably distinguish over the cited references.

For the foregoing reasons, it is submitted that the Examiner’s rejection of claims 1 – 30 was erroneous, and reversal of the decision is respectfully requested.

The fee of \$250.00 for filing this Appeal Brief is being paid concurrently via EFS-Web. If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above-referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Meyertons, Hood, Kivlin, Kowert & Goetzel P.C., Deposit Account No. 50-1505/5602-12200/JCH.

Respectfully submitted,

/Jeffrey C. Hood/

Jeffrey C. Hood, Reg. #35198
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800
Date: September 11, 2007 JCH/RPH

VIII. CLAIMS APPENDIX

The claims on appeal are as follows.

1. A method comprising:
 - receiving software at one or more remote computer systems; and
 - receiving instructions for installing the software at the one or more remote computer systems, wherein the instructions for installing the software comprise one or more messages in a portable format;
 - translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions; and
 - executing the executable instructions to install the software at each of the one or more remote computer systems.
2. The method of claim 1,
 - wherein the instructions are sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems.
3. The method of claim 1,
 - wherein the software is sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems.
4. The method of claim 1, further comprising:
 - receiving user input to record the instructions for installing the software.
5. The method of claim 4,

wherein the user input comprises instructions to send the software to an additional remote computer system and install the software on the additional remote computer system.

6. The method of claim 1, further comprising:

receiving user input to select the one or more remote computer systems from a plurality of available computer systems.

7. The method of claim 1,

wherein the portable format comprises eXtensible Markup Language (XML), and wherein the messages comprise XML messages.

8. The method of claim 1,

wherein the instructions are received through a distributed computing infrastructure.

9. A computer-accessible memory medium comprising program instructions, wherein the program instructions are computer-executable to implement:

receiving software at one or more remote computer systems; and

receiving instructions for installing the software at the one or more remote computer systems, wherein the instructions for installing the software comprise one or more messages in a portable format;

translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions; and

executing the executable instructions to install the software at each of the one or more remote computer systems.

10. The computer-accessible memory medium of claim 9,

wherein the instructions are sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems.

11. The computer-accessible memory medium of claim 9,

wherein the software is sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems.

12. The computer-accessible memory medium of claim 9, wherein the program instructions are further computer-executable to implement:

receiving user input to record the instructions for installing the software.

13. The computer-accessible memory medium of claim 12,

wherein the user input comprises instructions to send the software to an additional remote computer system and install the software on the additional remote computer system.

14. The computer-accessible memory medium of claim 9, wherein the program instructions are further computer-executable to implement:

receiving user input to select the one or more remote computer systems from a plurality of available computer systems.

15. The computer-accessible memory medium of claim 9,

wherein the portable format comprises eXtensible Markup Language (XML), and wherein the messages comprise XML messages.

16. The computer-accessible memory medium of claim 9,

wherein the instructions are received through a distributed computing infrastructure.

17. A system comprising:
 - a first computer system comprising a first Central Processing Unit (CPU) and a first memory; and
 - one or more remote computer systems, each comprising a respective remote CPU and a respective remote memory;
 - wherein the first computer system and the one or more remote computer systems are communicatively coupled via a network;
 - wherein the first memory stores program instructions which are executable by the first CPU to:
 - send software to the one or more remote computer systems; and
 - send instructions for installing the software to the one or more remote computer systems, wherein the instructions for installing the software comprise one or more messages in a portable format;
 - wherein the remote memories store program instructions which are executable by the respective remote CPUs to:
 - receive the software; and
 - receive the instructions for installing the software;
 - translate the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions; and
 - execute the executable instructions to install the software at each of the one or more remote computer systems.

18. The system of claim 17,
 - wherein the instructions are sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems.
19. The system of claim 17,

wherein the software is sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems.

20. The system of claim 17, wherein the program instructions are further executable by the first CPU to:

receive user input to record the instructions for installing the software.

21. The system of claim 20,

wherein the user input comprises instructions to send the software to an additional remote computer system and install the software on the additional remote computer system.

22. The system of claim 17, wherein the program instructions are further executable by the first CPU to:

receive user input to select the one or more remote computer systems from a plurality of available computer systems.

23. The system of claim 17,

wherein the portable format comprises eXtensible Markup Language (XML), and wherein the messages comprise XML messages.

24. The system of claim 17,

wherein the instructions are received through a distributed computing infrastructure.

25. The method of claim 1,

wherein the instructions are sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems.

26. The method of claim 1,

wherein the software is sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems.

27. The computer-accessible memory medium of claim 9,
wherein the instructions are sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems.

28. The computer-accessible memory medium of claim 9,
wherein the software is sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems.

29. The system of claim 17,
wherein the instructions are sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems.

30. The system of claim 17,
wherein the software is sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems.

IX. EVIDENCE APPENDIX

No evidence submitted under 37 CFR §§ 1.130, 1.131, or 1.132 or otherwise entered by the Examiner is relied upon in this appeal.

X. RELATED PROCEEDINGS APPENDIX

There are no related proceedings known to Appellants, Appellants' legal representatives, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.